APPENDIX

Inaccuracies in the Statement of the Case, Brief for the Petitioner

1. Page 5—The debtor is "essentially sound and profit making."

Misleading because the debtor was never a sound operation under the pre-reorganization leadership of Eric Rath. Its operating loss in 1956 was more that $800,000 and it lost even more in 1957 before these proceedings began in June of that year. (Trustee's Report of Investigation, I 260, 270-272)

2. Pages 5 & 13—References to the trustee having received from the reorganized company "stock options firmly promised or transparently understood" (p. 5) and "formal assurance of substantial stock options". (p. 13)

These statements are wholly inaccurate because none of the various plans of reorganization approved in these proceedings has authorized, expressly or by implication, the issuance of stock options to the trustee or to anyone else.

3. References throughout the brief to charges of *fraud* against Merrill-Stevens are entirely untrue. There are no *facts* anywhere in the record to indicate that Merrill-Stevens did anything fraudulent. The best evidence of this is contained in the complete specifications filed by Petitioner detailing its objections to the Merrill-Stevens claim. (II 1042-1072.4) This document, 36 pages of unsworn statements by counsel, contains no facts pertaining to any alleged *fraudulent* transaction. All of the objections to the claim pertain to the work performed under contract on the vessels of the debtor and to an alleged contract to purchase

certain common stock of the debtor; all pertain to charges involving alleged torts or contract violations. This is made clear by the concluding paragraph of the specifications which states:

In conclusion, we do not have to prove tort claims against Merrill-Stevens. Merrill-Stevens has to prove contract claims against the debtor. The burden is squarely on them. (II 1072.4) The charges of fraud against Merrill-Stevens constitute improper use of the word by Petitioner's counsel throughout these proceedings, including unwarranted assumptions to that effect contained in the statement of Questions Presented.

4. Page 5—The statement that *control* of the debtor under the plan of reorganization "went to the trustee along with one or another of the insider creditors" who had participated in frauds.

This statement is misleading for the same reasons noticed at the beginning of our Statement of the Case with respect to a similar misrepresentation in the SEC brief.

5. Page 10—Characterizing the plan of reorganization as "control to Merrill-Stevens without investigation of fraud charges; priority to Shaffer-Spitzer without remedy for proven fraud."

This is inaccurate in every particular: control did not go to Merrill-Stevens; its claim was thoroughly investigated; there are no facts to sustain a charge of fraud against Merrill-Stevens as explained under No. 3 above; there was no *proven* fraud against Shaffer-Spitzer.

6. Page 13—Charges of "marketrigging" by Merrill-Stevens.

This characterization is entirely false. Merrill-Stevens never sold any TMT stock.